

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

IN RE:

EMMANUEL OSADOLOR,

Applicant for a License to Practice Pharmacy

Case No.: B-01-80046

RECOMMENDED DECISION

I. Introduction

On February 17, 1999, Emmanuel Osadolor filed an application for a license to practice pharmacy. On the application form, Mr. Osadolor requested a license by “endorsement.” On August 3, 2000, the Board of Pharmacy notified Mr. Osadolor that it intended to deny the application because a license by endorsement may be issued only to an applicant who holds a current license from another state. The Notice of Intent to Deny informed Mr. Osadolor that he had a right to request a hearing within twenty days of service of the notice.

On August 9, 2000, Mr. Osadolor filed a request for hearing. For reasons that are not apparent from the record, the Board of Pharmacy took no action on his hearing request until February 1, 2001, when it voted to delegate the authority to conduct a hearing to this

administrative court, as authorized by D.C. Code § 6-2703(c). On February 21, 2001, I issued a scheduling order setting a hearing date of April 12, 2001.¹

All parties appeared for the hearing on April 12, 2001. At the conclusion of the hearing, I left the record open until April 20, 2001 to permit the parties to file additional documentary evidence. I have granted the Government's motion to extend that deadline until April 27, 2001 to permit it to obtain a proper copy of one of its exhibits. The record closed as of that date.

Pursuant to 17 DCMR 4114.3, I now submit the following findings of fact, conclusions of law and recommended order. As required by 17 DCMR 4114.3 and 4124.1, this decision is being issued within thirty days of the close of the record.

II. Findings of Fact

Mr. Osadolor was licensed as a pharmacist in the District of Columbia in 1977 and continued to hold a license until 1980 or 1981.² In 1981, Mr. Osadolor moved to Nigeria, and practiced there as a pharmacist until 1998 or 1999. He was licensed as a pharmacist by the Federal Republic of Nigeria throughout the period of his practice there.

¹ An earlier hearing date was not possible because the Board of Pharmacy's counsel was on medical leave until March 20.

² The evidence is in conflict about whether his last District of Columbia license expired in 1980 or 1981. *Compare* Government Exhibit ("GX") 101 (certification that the license expired in 1980) *with* Applicant's Exhibit ("AX") 205 (application for renewal of license sent in 1982 and implying that the previous license had expired in 1981). Because the exact expiration date of Mr. Osadolor's last District of Columbia license is not material, I will not resolve this evidentiary conflict.

On January 28, 1989, while still living in Nigeria, Mr. Osadolor wrote to the Occupational and Professional Licensing Division of the Department of Consumer and Regulatory Affairs (“DCRA”) seeking information about reactivating his District of Columbia pharmacist’s license. Applicant’s Exhibit 202 (“AX-202”).³ On April 10, 1989, a staff member from DCRA’s Board/Commission Support Division responded, asking that Mr. Osadolor advise the Board of Pharmacy of the last year he renewed his District of Columbia license.⁴ The Board also instructed “[i]f working outside of the United States, you must have pharmacy officials certify your licensure status.” AX-201. On January 22, 1990, the Pharmacists Board of Nigeria sent a letter to the District of Columbia Board of Pharmacy stating that Mr. Osadolor “has been fully registered by the Pharmacists Board of Nigeria, and has been practising in Nigeria since 1982.” AX-204. Mr. Osadolor heard nothing further from the Board of Pharmacy. On September 3, 1990, he wrote to the Board asking it to “speed up action” on his request to reactivate his license, AX-203, but he never received a response.

Having returned to the United States, Mr. Osadolor submitted an application to the Board of Pharmacy for a license by endorsement in February 1999. Mr. Osadolor testified that he spoke with a staff member of the Board of Pharmacy about his application in June 1999. He testified that she told him that he needed to complete 750 hours as a pharmacy intern under the supervision of a licensed pharmacist in order to reactivate his license. The Government presented

³ At that time, the health occupation boards, including the Board of Pharmacy, were located for administrative purposes in the Department of Consumer and Regulatory Affairs. They are now located for administrative purposes within the Department of Health.

⁴ That request was puzzling, as Mr. Osadolor’s earlier letter clearly stated that his license had been “inactive since 1981.” AX-202.

contrary evidence. Dr. Robert Vowels, Acting Executive Director for Health Licensing of the Department of Health, testified that the Board of Pharmacy's position was that Mr. Osadolor had to complete 750 hours of practice under supervision, but that he also needed to complete 30 hours of continuing education and that he needed to pass the national pharmacist's examination. There is no written record of what was communicated to Mr. Osadolor, and Dr. Vowels had no first hand knowledge about any oral communications between the Board's staff and Mr. Osadolor. He acquired his understanding solely from conversations with the Chairperson of the Board of Pharmacy, but it is not clear that the Chairperson ever spoke directly with Mr. Osadolor about the requirements for reactivating his license.

All parties agree that, at a minimum, the Board's staff member told Mr. Osadolor that he needed to complete 750 hours of supervised practice, and I so find. Mr. Osadolor promptly endeavored to fulfil that requirement. He made arrangements to work at a pharmacy under the supervision of Mr. Luciano Sotero, a registered pharmacist and former member of the Board of Pharmacy. Mr. Sotero testified at the hearing and presented documentation showing that Mr. Osadolor completed approximately 2350 hours of practice under his supervision between May 1999 and July 2000. AX-207. Mr. Sotero also testified that he had sent to the Board all the information required to qualify as Mr. Osadolor's supervisor pursuant to the Board's regulations. Mr. Sotero testified forthrightly and without hesitation on this point. As a former member of the Board of Pharmacy, he would have been familiar with both the regulations and their importance. Accordingly, I find that he filed all the necessary information with the Board of Pharmacy and that Mr. Osadolor completed at least 2350 hours of practice under his supervision.

The factual dispute that remains is whether any representative of the Board ever told Mr. Osadolor that he also needed to take the national pharmacist's examination and to complete 30 hours of continuing education. I will not resolve this dispute because, for the reasons stated below, it is not material to the resolution of this case. I can recommend that Mr. Osadolor's application be granted only if he has satisfied the legal requirements for issuance of a license. Those requirements exist regardless of any erroneous advice he may have been given.

III. Conclusions of Law

Mr. Osadolor applied for a license by endorsement. The Health Occupations Revision Act of 1985 provides that each health occupation board may issue a license by an endorsement to an applicant who is "currently licensed or certified and is in good standing under the laws of another state with standards which, in the opinion of the board, are comparable to the requirements of this chapter." D.C. Code § 2-3305.7(b)(1). In its discretion, a board also may require an applicant for license by endorsement to pass a local examination. D.C. Code § 2-3305.7(b).⁵ Because Mr. Osadolor was not licensed by any state when he submitted his application, the Board of Pharmacy correctly decided to deny his application for a license by endorsement.

⁵ The requirements for license by endorsement differ slightly from the requirements for license by reciprocity. A license by reciprocity may be issued to an applicant licensed or certified under the laws of another state whose standards are "substantially similar" (instead of "comparable") to those of the District, provided that the state "admits health professionals licensed by the District in a like manner pursuant to an agreement between the District and the state." D.C. Code § 2-3305.7(a)(1). No local examination is required for issuance of a license by reciprocity. Mr. Osadolor did not seek a license by reciprocity.

Mr. Osadolor advances two additional grounds for the issuance of a license, even if his application for a license by endorsement was properly denied. First, he contends that the Board of Pharmacy should have responded to his request for reinstatement of his license in 1989 and 1990, and that its failure to do so means that he should be regarded as being licensed. The record contains no explanation for the failure of the Board's staff to respond to Mr. Osadolor's September 1990 inquiry, after it had received the information it had requested.⁶ There is no legal basis, however, for holding that the unexplained failure to respond to an inquiry justifies the granting of a license.

Mr. Osadolor never submitted an application to reinstate his license. Regulations issued pursuant to the Act specify the information that must be submitted in order to reinstate an expired license:

An applicant for reinstatement . . . shall demonstrate fitness to resume practice by submitting evidence satisfactory to the board that the applicant has the competency and knowledge of District and federal laws necessary to resume practice of the health occupation and that the applicant's resumption of practice will not be detrimental to the public interest or the integrity of the health profession.

17 DCMR 4010.3

Thus, a mere inquiry, followed by no action by the Board of Pharmacy's staff, is not grounds for issuing a license, particularly in a health profession where protection of the public is the paramount concern. *Joseph v. District of Columbia Board of Medicine*, 587 A.2d 1085, 1088

⁶ To be sure, the Pharmacists Board of Nigeria did not send the certification of Mr. Osadolor's licensure in Nigeria to the District of Columbia Board of Pharmacy until January 1990, nine months after the Board requested it.

(D.C. 1991). Inaction by the Board of Pharmacy, however regrettable it may be, is not a substitute for the evidence required by the regulation, which seeks to ensure that the applicant for a reinstated license is capable of resuming practice. Indeed, regulations were adopted in 1989 requiring applicants for reinstatement of a pharmacist's license to demonstrate that they had completed 30 hours in approved continuing education courses in the year immediately preceding the application for reinstatement and had completed 160 hours of professional practice under the supervision of a licensed pharmacist within a 60 day period. 17 DCMR 6506.7. There is no authority for holding that the Board of Pharmacy's non-response to Mr. Osadolor's inquiry somehow ripened into a right for him to receive a license notwithstanding his non-compliance with these important public health safeguards.

Mr. Osadolor's alternative argument is that the Board's staff advised him in 1999 that he would receive a license if he completed 750 hours of supervised practice and that he has complied with that requirement. As noted above, the Board does not agree that Mr. Osadolor was told that completion of the 750 hours would be sufficient for him to regain his license. Its position is that he was told that 30 hours of continuing education and passage of the national examination also were prerequisites.

Resolution of the factual issue of what Mr. Osadolor was told is irrelevant to this matter, as the legal requirements for him to obtain a license are expressly specified in the statute and its implementing regulations. Because of the length of time since Mr. Osadolor held a valid license, he must be treated as an applicant for a new license. D.C. Code § 2-3305.12(b) provides that a board "shall not reinstate the license of a health professional who fails to apply for reinstatement

of a license within 5 years after the license expires.” Instead, the health professional “may become licensed by meeting the requirements then in existence for obtaining an initial license” *Id.*⁷ At the time of his application in 1999, Mr. Osadolor’s license had expired at least 18 years earlier. Section 2-3305.12, therefore, required him to meet the requirements for obtaining an initial license.

The requirements that must be met by an applicant for an initial license who is not licensed in another state are set forth in 17 DCMR 6502, 6504 and 6505. Briefly summarized, those regulations mandate: 1) that Mr. Osadolor must hold a Bachelor of Science or Doctor of Pharmacy degree from an accredited school of pharmacy, 17 DCMR 6502.1(b)⁸; 2) that he must complete a pharmacy internship of 1,500 hours under the supervision of a licensed pharmacist, 17 DCMR 6502.1(b)(2); 3) that he must pass the National Association of Boards of Pharmacy Licensure Examination, 17 DCMR 6504; and 4) that he must pass a written examination developed by the Board of Pharmacy (the “District examination”). 17 DCMR 6505.

As noted above, the testimony about what requirements were communicated to Mr. Osadolor in 1999 by the Board’s staff is in conflict. Each party’s version of the conversation, however, contains an incorrect understanding of the requirements. In Mr. Osadolor’s version, he needed only 750 hours of supervised practice. The regulations, however, require him to have twice that number of hours and require him to pass two examinations. The Board of Pharmacy’s

⁷ Because he had been licensed before passage of the Health Occupations Revision Act of 1985, Mr. Osadolor was entitled to apply for reinstatement of his license until March 25, 1991. After that date, he had to be considered as an applicant for an initial license. 17 DCMR 4010.6.

⁸ There appears to be no dispute that Mr. Osadolor satisfies this requirement.

version makes the same mistake concerning the number of hours of experience, omits passage of the District examination, but adds a requirement of 30 hours of continuing education that is not required by the regulations.

Neither the Health Occupations Revision Act nor the applicable regulations permit an administrative judge to recommend licensing standards other than those established by the statute and its implementing regulations. Thus, regardless of how I would resolve the dispute between Mr. Osadolor and the Board over what he was told in 1999, I would not recommend issuance of a license. Until Mr. Osadolor satisfies the mandated requirements for an initial license, I must recommend that his application be denied.

Mr. Osadolor appears to argue that he reasonably relied to his detriment upon the statements of the Board's staff member. That argument is apparently an attempt to invoke the doctrine of equitable estoppel in the hope that the staff member's mistaken advice would be binding upon the Board. If I accepted Mr. Osadolor's argument, it would be necessary to resolve the conflict in the testimony over precisely what he was told he needed to do. I conclude as a matter of law, however, that whatever representations may have been made to Mr. Osadolor are insufficient to alter the clear requirements of the applicable law and regulations.

Both the Supreme Court and the District of Columbia Court of Appeals have left open only an extremely slim possibility that the Government may be equitably estopped when an employee communicates misinformation to a member of the public. *E.g., Office of Personnel Management v. Richmond*, 496 U.S. 414, 424 (1990) ("We leave for another day whether an

estoppel claim could ever succeed against the Government.”); *Gropp v. District of Columbia Board of Dentistry*, 606 A.2d 1010, 1016 (D.C. 1992) (“The Supreme Court has not resolved the issue of whether estoppel may ever be applied against the government.”) As these cases recognize, permitting a result contrary to law based solely upon mistaken advice given by a Government employee is an extreme step, rarely taken, if ever. The facts of this case do not justify taking such a step, for at least three reasons.

First and most important, the statutory purpose of protecting the public interest must be paramount. The dispute between Mr. Osadolor and the Board of Pharmacy does not involve only Mr. Osadolor’s private interests. There is a substantial public interest in ensuring that only qualified persons practice pharmacy, and the regulations specify safeguards that must be followed in order to accomplish that goal. Permitting those safeguards to be waived based upon *ad hoc* and inaccurate advice given by government employees could have disastrous consequences if unqualified persons were admitted to the practice of health professions. The Court of Appeals has recognized that estoppel might be permitted “to prevent injustice and promote the public interest.” *Chamberlain v. Barry*, 606 A.2d 156, 158 (D.C. 1992). The public interest, however, is not promoted when regulations adopted to protect public health are ignored.

Second, the law and the regulations governing the reinstatement of expired licenses are unambiguous and Mr. Osadolor had a duty to familiarize himself with them. *Heckler v. Community Health Services*, 467 U.S. 51, 54 (1984). See also *Chamberlain*, *supra*, 606 A.2d at 159. Consequently, his reliance upon contrary advice can not be said to be reasonable for the purpose of an estoppel analysis.

Third, the oral nature of the alleged advice militates against applying an estoppel:

It is not merely the possibility of fraud that undermines our confidence in the reliability of official action that is not confirmed or evidenced by a written instrument. Written advice, like a written judicial opinion, requires its author to reflect about the nature of the advice that is given to the citizen, and subjects that advice to the possibility of review, criticism and reexamination. The necessity for ensuring that governmental agents stay within the lawful scope of their authority . . . argues strongly for the conclusion that an estoppel can not be erected on the basis of . . . oral advice

Heckler, supra, 496 U.S. at 65.

The law does not permit the awarding of a license as an appropriate remedy for the delays that have occurred in this case or for the erroneous advice that Mr. Osadolor received. While not condoning those circumstances in any way, I am unable to recommend that Mr. Osadolor receive a license.

IV. Recommended Order

Based upon the foregoing findings of fact and conclusions of law, I recommend that the following order be entered:

It is **ORDERED** that the application of Emmanuel Osadolor for a license to practice pharmacy be **DENIED**.

Dated: _____

/s/ **5-29-01**

John P. Dean
Administrative Judge